COMPLAINT INVESTIGATION LYON COUNTY SCHOOL DISTRICT (#LY011410)

INTRODUCTION

On 1/14/10, the Nevada Superintendent of Public Instruction received a complaint dated 1/13/10 from a parent alleging violations in the special education program of a student with disabilities attending Lyon County School District (LCSD). An investigation team was appointed to examine the allegations that: 1) the district failed to diagnose the student as autistic despite the fact that the parent provided outside reports stating that the student was autistic; 2) the student's daily log did not include incidents that occurred in the classroom as required in his individualized educational program (IEP), and 3) a paraprofessional had physically forced the student's chin up although the student's behavior plan doesn't give anyone the right to touch the student.

Subsequent to the filing of the complaint, the parent notified the complaint investigation team that there was additional information with regard to a police investigation concerning an allegation that the student had been struck by a teacher. The investigation team notified the parent of the United States Department of Education's discussion of the Individuals with Disabilities Education Act (IDEA) regulations on the amendment of a complaint. That discussion stated "if the additional information a parent submits is on the same or related incident, it would be part of the amended complaint. If the information submitted...is on a different or unrelated incident, generally, the new information would be treated as a separate complaint." (Federal Register, Vol. 71, No. 156, August 14, 2006, p. 46603). The investigation team further stated that the Nevada Department of Education (NDE) had determined that the allegation about the alleged incident was not "on the same or related incident" as the original complaint and therefore was not under the jurisdiction of this complaint investigation. The parent was informed that she had the option to file another complaint regarding a specific violation of the requirements of Part B of the IDEA or the Nevada Administrative Code (NAC) for special education programs.

COMPLAINT ISSUES

The allegations articulated in the complaint, and further clarified by a review of documents and interviews, raised the following issues under the jurisdiction of the NDE:

- Issue 1: Whether LCSD complied with federal and state requirements when determining the eligibility of the student with respect to considering the input provided by the parent, specifically recent assessments from the student's physician and the outside evaluation conducted by a licensed psychologist.
- Issue 2: Whether LCSD complied with federal and state requirements to implement the student's individualized educational program (IEP), specifically with regard to:
 - a. Providing information in the daily log concerning "incidents" that occurred at school that resulted in the student being sent to the principal's office.
 - b. Physically prompting the student to redirect his attention.

PERSONS PROVIDING INFORMATION

The investigation team reviewed information from the following people:

- Parent
- LCSD Director of Special Services (Director)
- Special education teacher
- Paraprofessional
- 1st grade teacher

DOCUMENTS REVIEWED

The documents reviewed by the investigation team included the following:

- 1. 12/4/09 IEP
- 2. 8/21/09 IEP
- 3. 9/9/08 Behavioral Plan
- 4. 9/21/09 Positive Behavior Support Plan Addendum to 9/9/08 Behavioral Plan
- 5. Daily logs for 2009/2010 school year from 8/24/09—1/13/10
- Incident reports for 2009/2010 school year from 12/14/09—2/5/10
- 7. Prior Written Notices (PWNs) dated 2/6/09, 10/19/09, 11/10/09, 12/4/09 and 1/26/10
- 8. Medicaid Client Information Form
- 9. 2/13/09 Eligibility Team Evaluation Plan
- 10. 2/26/09 Confidential Psycho-Educational Report (Psycho-Educational Report)
- 11. 2/27/09 Statement of Eligibility—Health Impairment
- 12. 10/26/09 LCSD Memorandum to parents
- 13. 11/6/09 Outside Evaluation
- 14. 11/10/09, 1/19/10 and 1/26/10 Letters from LCSD Director
- 15. 12/4/09 Parent Consent for Evaluation Form
- 16. 9/18/09 and 12/11/09 Memoranda from student's psychiatrist
- 17. 11/12/09 and 1/13/10 letters written by parent
- 18. 1/15/10 Determination of Additional Data Needed for Reevaluation
- 19. Student attendance records 2009/2010 school year
- 20. 12/2/09 Mediation agreement

The investigation team also reviewed the following material:

- Nevada Administrative Code (NAC), Chapter 388
- IDEA Regulations, 34 CFR Part 300

FINDINGS OF FACT

This investigation involved a first grade elementary school student eligible to receive services under the category of other health impairment. A review of documents, as well as information collected from the parent, the director, the special education teacher, the 1st grade teacher, and the paraprofessional revealed the following facts.

Determination of Eligibility

On 2/6/09, a PWN was sent to the parents proposing a reevaluation, because one was due. In addition, the student was turning six years of age and previously had been eligible for services under the category of developmentally delayed. As of the 2/6/09 PWN, the district suspected the student of having other health impairments. On 2/27/09, the student's eligibility team met, including the parent, and did determine that the student was eligible for services under the category of other health impaired. At that meeting, the parent informed the district that she would like the team to consider outside evaluation information in order for the team to consider if the student also had autism. The parent did not have the information available at that time. The district affirmed at the 2/27/09 meeting that when the information was available it would be taken into consideration for the purposes of determining autism as a secondary disability. In November 2009, the parent informed the district that written input was available from outside sources. At that time, the district began the process of reevaluation, indicating in the scope of the reevaluation that it would consider the reports of the student's physician and the outside psychologist in a reevaluation to reconsider the student's eligibility determination.

Daily Log

The parent stated that the IEP required that the daily log report all incidents involving the student that resulted in his being sent to the principal's office. The parent stated in her complaint that there were at least three incidents which resulted in the student being sent to the principal's office that were not noted on the daily log sheets. She reported that the principal notified her by phone of these incidents either on the day of the incidents or several days later.

The student had an 8/21/09 IEP and a 12/4/09 IEP (IEPs) for the 2009/2010 school year up to the date of the complaint. The 8/21/09 IEP had an accommodation that stated "Daily notes to and from school. Notebook to go with him to specials and therapy settings". The 12/4/09 IEP had an accommodation that stated "Notebook to go with him to specials and therapy settings". There are no additional references to the daily logs nor any specification of the information to be included in the daily logs in the accommodations or in any other part of the IEPS. Daily logs were provided from 8/24/09, the first school day following the 8/21/09 IEP up through the date of the complaint. The daily log had a specific format beginning in December of 2009. There was nothing on that form to specify that a report must be noted each time the student was sent to the principal's office.

Physical Prompting of Student

The student had a 9/9/08 Behavior Plan in effect, which was amended by a 9/21/09 Positive Behavior Support Plan (Behavior Plan). The IEPs incorporated the Behavior Plan by reference in the Supplementary Aids and Services section of the IEP.

The parent reported that on 1/6/10 the paraprofessional touched the student's chin and that the Behavior Plan in effect for the 2009/2010 school year prohibited anyone from touching the student. The paraprofessional reported that while the parent was observing the student on 1/6/10 the student was atypically distracted, talking to other students, looking back at his mother and not following the 1st grade teacher's directions for academic work. The paraprofessional stated that she decided to redirect the student by turning the student's chin so that he was paying attention to the 1st grade teacher's instructions.

The Behavior Plan had two target behaviors: oppositional defiant behaviors (i.e. irritability) and physical aggression. The 9/08 Behavior Plan also stated that the program, "Handle with Care" would be used should the student attempt to hit and kick staff or students. There was no prohibition in the Behavior Plan or the IEP for physically prompting the student to redirect his behavior when he was distracted during academic instructions nor were there any other references to address this behavior.

CONCLUSIONS OF LAW AND REASONS

Issue 1: Whether LCSD complied with federal and state requirements when determining the eligibility of the student with respect to considering the input provided by the parent, specifically recent assessments from the student's physician and the outside evaluation conducted by a licensed psychologist.

This complaint involved an allegation that the district failed to consider information from the parent, which suggested that the student should be found eligible for special education services under the category of autism.

State regulations at NAC §388.340(5)(a) state that the district, when interpreting evaluation data to "determine the eligibility of a pupil for special services and programs of instruction...shall: (a) Draw upon information from a variety of sources, including...input from the parents...".

In this case, the district conducted a 2/27/09 Eligibility Meeting. At that meeting, the parent referenced reports from outside sources to suggest that the student had autism, but did not produce these reports.

The district was required to consider the input of the parents and did so. There were no outside evaluations or any other recent assessments available or provided by the parents prior to, or at the

2/27/09 meeting. The district asserted that when outside information *was* available, the reevaluation process could be reengaged. In November 2009, the parent produced information from outside sources, and the district began the process for reevaluation to consider this information. The complaint investigation team determined that the Eligibility Team drew upon information made available to it by the parent and began the process to consider this information as soon as it was made available.

Therefore, the investigation team concluded that LCSD complied with state regulations when determining the eligibility of the student with respect to considering the input provided by the parent, specifically assessments from the student's physician and the outside evaluation conducted by a licensed psychologist.

- Issue 2: Whether LCSD complied with federal and state requirements to implement the student's individualized educational program (IEP), specifically with regard to:
 - a. Providing information in the daily log concerning "incidents" that occurred at school that resulted in the student being sent to the principal's office.
 - b. Physically prompting the student to redirect his attention.

This complaint involved allegations by the parent that the district did not note three incidents in the student's daily log between 12/1/09 and 1/13/10, specifically incidents that required the student to go to the principal's office. The parent also alleged that a teacher physically prompted the student by lifting his chin up although the student's behavior plan did not permit anyone to touch the student.

State regulations at NAC §388.281(6)(g) require that the school district shall "provide the services and instruction deemed necessary for the pupil by the [IEP] committee."

a. Providing information in the daily log concerning "incidents" that occurred at school

In this case the student's IEPs required that a daily log be kept in each of the student's classes. There was no requirement in the IEPs or in the Behavior Plan to include in the daily log the incidents that caused the student to be taken to the principal's office. While there were incidents that caused the student to be taken to the principal's office, and those incidents were sometimes reported to the parent in alternative ways other than in the daily log, there was no requirement that these incidents be noted in the log. The complaint investigation team determined the district had no obligation to include information in the daily log about incidents that occurred which resulted in the student being sent to the principal's office. With respect to reporting such incidents, the district provided the services and instruction required by the IEP.

Therefore, the investigation team concluded that LCSD complied with state regulations to implement the student's IEP, specifically with regard to providing information in the daily log concerning incidents that occurred at school which resulted in the student being sent to the principal's office.

b. Physically prompting the student to redirect his attention

In this case, the student's Behavior Plan addressed steps district staff should take when the student exhibited oppositional defiant behaviors and/or physical aggression. Neither the IEP or the Behavior Plan addressed specific steps to take if the student was merely distracted or off task in class, nor did the Behavior Plan prohibit staff members from physically prompting the student as a tool of redirection when he was distracted during academic instruction.

The complaint investigation team determined that the district did provide the services and instruction in the IEP and Behavior Plan with respect to physically prompting the student, in as much as there were no prohibitions against doing so, and no parameters for how to do so when deemed appropriate.

Therefore, the investigation team concluded that LCSD complied with state regulations to implement the student's IEP, specifically with regard to physically prompting the student to redirect his attention.